IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.3084 OF 1990

Anant Dattatraya Kundalkar .. ..Petitioner

Versus

Ulhas Nathoba Kalokhe & ors. .. ..Respondents

Mr.R.M.Pethe i/b R.G.Ketkar for petitioner

CORAM : D.B.BHOSALE, J.

DATE : 14TH SEPTEMBER, 2006.

P.C.:

1. Heard.

2. This petition is directed against the Order dated 20.4.1990 by which the application filed by the Respondent-Defendant for condonation of delay caused in preferring an Appeal against the Judgment and Decree dated 25.8.1986 was allowed subject to payment of costs of Rs.200/= to be paid to the Petitioner herein.

3. The Petitioner-Planitiff had filed a suit for mandatory injunction as also for injunction restraining the defendants from causing obstruction to the plaintiff from enjoying the suit premises. The suit was partly decreed vide Judgment and Order dated 26.8.1986. The Respondent-defendant had applied for certified copy of the judgment and decree on 3.9.1986 and they received it on 10.10.1986. However, the appeal was preferred on 1.8.1987 with an application seeking condonation of delay in preferring the appeal.

4. The Legislature has conferred the powers to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression ‘sufficient cause’ employed is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. The respondent-defendant, in the present case, did not stand to benefit by lodging an appeal late. It cannot be presumed that the delay has occasioned deliberately.

5. I perused the impugned order. The Appellate

Court has condoned the delay for the reasons stated in the impugned order. The court seems to have taken into considering the well settled principle in law while dealing with the application seeking condonation of delay. The order impugned does not suffer from any infirmity worth mentioning. Mr. Pethe, the learned counsel appearing for the Petitioner-plaintiff strenuously contended that the courts below have not appreciated the cause shown in judicial manner while condoning the delay holding it to be sufficient in preferring the appeal. According to Mr. Pethe, the cause shown was not at all sufficient. From perusal of the impugned judgment and the arguments advanced before me it cannot be said that the order passed by the appellate court is wrong and illegal and has been passed without considering the material on record in proper perspective. In my opinion no ground is made out warranting interference by this court under Article 227 of the Constitution of India. In the circumstances, the petition is dismissed. Rule is discharged.

6. The appellate court shall dispose of the appeal as expeditiously as possible and preferably within a period of six months from the date of receipt of this

Order.

(D.B.Bhosale,J.)